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Resolutions adopted by the General Assembly on 16 December 2013

[*on the report of the Sixth Committee (A/68/462)*]

68/107. Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency and part four of the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law

A

Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 52/158 of 15 December 1997, in which it recommended the use of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, contained in the annex thereto,

Noting that legislation based upon the Model Law on Cross-Border Insolvency has been enacted in some 20 States,

Noting also the widespread increase in the incidence of cross-border insolvency proceedings and, accordingly, the growing opportunities for use and application of the Model Law on Cross-Border Insolvency in cross-border insolvency proceedings and the development of international jurisprudence interpreting its provisions,

Noting further that courts frequently have reference to the Guide to Enactment of the Model Law on Cross-Border Insolvency[1] for guidance on the background to the drafting and interpretation of its provisions,

[1] A/CN.9/442, annex.

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Recognizing that some uncertainty with respect to the interpretation of certain provisions of the Model Law on Cross-Border Insolvency has emerged in the jurisprudence arising from its application in practice,

Convinced of the desirability, in the interpretation of those provisions, of regard to the international origin of the Model Law on Cross-Border Insolvency and the need to promote uniformity in its application,

Convinced also of the desirability of providing additional guidance through revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency with respect to the interpretation and application of selected aspects of the Model Law to facilitate uniform interpretation,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for revising the Guide to Enactment of the Model Law on Cross-Border Insolvency;[1]

2. *Requests* the Secretary-General to publish, including electronically, the text of the Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency, together with the text of the Model Law on Cross-Border Insolvency,[2] and to transmit it to Governments and interested bodies, so that it becomes widely known and available;

3. *Recommends* that the Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency be given due consideration, as appropriate, by legislators, policymakers, judges, insolvency practitioners and other individuals concerned with cross-border insolvency laws and proceedings;

4. *Also recommends* that all States continue to consider implementation of the Model Law on Cross-Border Insolvency, and invites States that have enacted legislation based upon the Model Law to advise the Commission accordingly.

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B

Part four of the Legislative Guide on Insolvency Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolutions 59/40 of 2 December 2004, in which it recommended the use of the *Legislative Guide on Insolvency Law* of the United Nations Commission on International Trade Law,[3] and 65/24 of 6 December 2010, in which it recommended the use of part three of the *Guide*, on the treatment of enterprise groups in insolvency,

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[2] Resolution 52/158, annex.

[3] United Nations publication, Sales No. E.05.V.10.

Considering that effective insolvency regimes, in addition to providing a predictable legal process for addressing the financial difficulties of troubled enterprises and the necessary framework for their efficient reorganization or orderly liquidation, should also permit an examination to be made of the circumstances giving rise to insolvency and, in particular, of the conduct of directors of such an enterprise in the period before insolvency proceedings commence,

Noting that the *Legislative Guide*, while addressing the obligations of directors of an enterprise once insolvency proceedings commence, does not address the conduct of directors in the period approaching insolvency and the obligations that might be applicable to directors in that period,

Considering that the provision of incentives for directors to take timely action to address the effects of financial distress experienced by an enterprise may be key to its successful reorganization or liquidation and that such incentives should be part of an effective insolvency regime,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for developing and adopting part four of the *Legislative Guide on Insolvency Law*, addressing the obligations of directors of an enterprise in the period approaching the insolvency of that enterprise;[4]

2. *Requests* the Secretary-General to publish, including electronically, the text of part four of the *Legislative Guide* and to transmit it to Governments and other interested bodies;

3. *Recommends* that all States utilize the *Legislative Guide* to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the *Guide* when revising or adopting legislation relevant to insolvency, and invites States that have used the *Guide* to advise the Commission accordingly.

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[4] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. V, sect. B.